

# Olivehurst Public Utility District



## Agenda Item Staff Report

Meeting Date: 04/15/2021

### Item description/summary:

**Consider approving field use agreement with Yuba City Rayados Football Club for use of soccer fields at Richard "Doug" Donahue Park.**

This request for use of the soccer fields at Richard "Doug" Donahue came after the last committee meetings. This item comes before the board tonight because, if approved, Rayados plans on having scheduled matches starting Saturday, April 17<sup>th</sup>. The Rayados were previously having practices and matches at Yuba College, but due to COVID have not been allowed to.

I have taken a previously authorized field use agreement and altered it to be for Rayados.

### Fiscal Analysis:

N/A

### Employee Feedback

### Sample Motion:

Approve the field use agreement with the Yuba City Rayados Football Club

Prepared by:

Christopher Oliver, Public Works Engineer

# **OLIVEHURST PUBLIC UTILITY DISTRICT PARK**

## **SOCCER FIELD USE AGREEMENT**

**THIS USE AGREEMENT (“Agreement”)** is entered into on this the 15th Day of April 2021, by and between the Olivehurst Public Utility District, a public utility district formed and existing under California law (hereinafter referred to as “OPUD”), and Yuba City Rayados (hereinafter referred to as “Rayados”, a community benefit, non-profit organization. OPUD and Rayados will be referred to collectively as the “Parties,” and individually as a “Party.”

### **RECITALS**

- A. OPUD owns and has available for use certain premises; and
- B. Rayados is seeking a facility to conduct its recreation programs and is willing to maintain the facility in question at its own expense and offer a youth recreation program to residents from Plumas Lake and surrounding communities;
- C. Rayados will benefit from this Agreement in that it will obtain shared use of the premises where it can operate its programs and activities; and
- D. OPUD will benefit in that it will help to facilitate community-oriented programs coming into Plumas Lake and surrounding communities and that said premises will be utilized for its intended purposes, which is to serve community oriented activities in and around Plumas Lake.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby stipulated, the parties agree as follows:

#### **1. AGREEMENT**

OPUD is the owner of certain real property situated in the County of Yuba, State of California, commonly known as the Soccer fields at Richard “Doug” Donahue, Plumas Lake, CA 95961 (“the Property”). The Property includes Soccer field facilities (“Field Facilities”). OPUD hereby agrees to grant Rayados limited and scheduled access and use of the Field Facilities.

#### **2. TERM OF AGREEMENT**

The term of this Agreement shall commence upon the execution of this Agreement and continue thereafter and continue until one (1) year thereafter. The Agreement will automatically renew for successive one (1)-year periods, unless terminated, with or without cause, by either party upon at least thirty (60) days prior written notice.

#### **3. USE OF PROPERTY**

Rayados hereby acknowledges and agrees that the Property shall be used only for community and public purposes consistent with its non-profit status. No use shall be made

of the Property, nor any use that would result in an increase in the existing rate of insurance upon the Property, or in a cancellation of any insurance policy covering the Property. Rayados shall not commit waste or any public or private nuisance upon the Property. In addition, the following provisions describe Rayados's use of the Property:

- A. Rayados shall have use of the Property only for scheduled, official games. Furthermore, the scheduling of official games will be within the following days and times each year: March 1<sup>st</sup> through July 31<sup>st</sup>. Games shall not be scheduled during the times of day when school is in session.

Rayados's use of the Field Facilities is limited to actual scheduled, official games. Days of use are to be determined on or before March 1<sup>st</sup> each year of use. Rayados is to submit a schedule of games to be published and posted by OPUD so that other recreational activities and benefits can be scheduled and enjoyed at the Property. In addition to the scheduled official games, Rayados may schedule one evening (excluding weekends) each week during the season for practices at the ballfields. The practice sessions shall be included in the above described schedule.

Any further requests by Rayados for use of the Field Facilities will be determined on a case-by-case basis. OPUD or other lessees or invitees of OPUD are free to utilize the Property at all other times which OPUD, in its sole discretion, deems appropriate or is necessary.

- B. At times when either OPUD or Rayados does not use the Property, either Party may reserve the use of the Property by means of placing a reservation through the OPUD office located at 1970 9<sup>th</sup> Ave, Olivehurst, CA 95961. Such reservation is subject to written approval by OPUD.
- C. Other than stipulated in section 'A' above, Rayados does not have exclusive use of the property for practice. Use of the property during all times other than officially scheduled games is on a first come first served basis. This is to allow for the recreational use of the Property by other individuals and recreational events.
- D. OPUD does not provide recreation supervisors, coaches, trainers, or similar staff. Rayados will be solely responsible for any and all costs associated with damages caused to any OPUD property as a result of Rayados staff, volunteers or members, participants or its invitees. Rayados shall provide all reasonably required staff, supervisors, volunteers, coaches, and shall insure that all staff, including volunteers, are properly trained and supervised, and that all participants are properly supervised.

#### **4. UTILITIES AND SERVICES**

OPUD will cover all Utility and Service expenses including, but not limited to, phone, water, electricity, gas, garbage removal, sanitary sewage disposal service and any other cost necessary or incidental to Rayados's use of the Property pursuant to this Agreement (collectively "Utilities").

**5. TAX EXEMPT STATUS, LIENS, ENCUMBRANCES**

Rayados is a not-for-profit community organized group. Rayados agrees to keep the Property free and clear of all levies, liens, and encumbrances for the term of the Agreement.

**6. ASSIGNMENT OR SUBLEASE**

Rayados will not assign this Agreement or sublet the Property or any part thereof.

**7. MAINTENANCE, REPAIR, & ALTERATION AND ADDITIONS BY Rayados**

With the express written permission of OPUD, Rayados may, during the term of the Agreement, make minor alterations, modifications or improvements to the Property provided the same shall not be detrimental to the Property, including its integrity and usefulness. Anything used in the alteration process will then become the Property of OPUD. At the discretion of OPUD, Rayados may be required to return the Property to its pre-Agreement condition upon termination of the Agreement, reasonable wear and tear expected. Rayados agrees, at Rayados's own expense, to keep the Property in good condition and repair, and to deliver to OPUD physical possession of the Property at the end of the Term in good condition and repair, reasonable wear and tear and use, and loss by fire or other casualty or by earthquake or other act of God accepted. Rayados agrees to repair any damage to the Property caused by or in connection with Rayados's use of the Property, the removal of any articles of personal property, business or trade fixtures, machinery, equipment, furniture, movable partition or permanent improvements or additions, including without limitation thereto, repairing the field and turf and painting walls/backstop where required by OPUD to OPUD's reasonable satisfaction, all at Rayados's sole cost and expense.

Rayados shall, after each meeting or use of the Property, clean any debris, trash, or other soiling caused by Rayados's use. Rayados shall, at its sole expense, use its own cleaning supplies to perform the same.

Rayados will be responsible for any and all costs associated with damages caused to any OPUD property as a direct result of Rayados's use, staff, volunteers, or members, participants or its invitees.

This Agreement between OPUD and Rayados is a commercial lease. The Property is being leased "AS IS, WHERE IS" WITHOUT WARRANTY BY OPUD AS TO ITS CONDITION AND FITNESS FOR Rayados's INTENDED USE. Therefore, Rayados waives the provisions of California Civil Code §§ 1941 and 1942, the implied warranty of habitability, and any other law or regulation, judge-made or statutory, that would require OPUD to maintain the Property in a tenantable condition other than conditions expressly required by this Agreement. Rayados has inspected the Property and has confirmed to itself that the Property is fit and satisfactory for its intended purpose.

**8. LEGAL TITLE**

Legal title to the Property shall remain vested in OPUD.

**9. ENTRY AND INSPECTION**

OPUD or its agents may, at any time, enter into and upon the Property for the purpose of inspecting the same, or to make repairs, alterations or additions. For those maintenance or repair activities that OPUD has advance notice of, it shall notify Rayados and coordinate an appropriate time to enter the Property to perform said maintenance or repair.

**10. DUTY TO INSURE**

Rayados shall provide for and cause to be maintained in force a commercial general liability insurance policy covering liability for injury to persons or property occurring in or about the Property (1 million dollars per occurrence). The required insurance shall be obtained from a company lawfully authorized to do business in California. A certificate of insurance evidencing the foregoing and showing OPUD as an additional insured shall be provided to OPUD contemporaneously with the execution of this Agreement. Rayados is required to provide OPUD immediate notice of any change, cancellation or modification of insurance coverage of any kind. This Agreement shall be voided if Rayados does not submit a certificate of insurance contemporaneously with the execution of this Agreement and maintain insurance satisfactory to OPUD.

Rayados shall forthwith notify OPUD, in writing, with a full description of the facts, circumstances, nature, results, and names and addresses involved about any occurrences on the Property which involve any injury to person or property, and shall provide OPUD promptly with copies of any claims for damages of any sort, including complaints in any court actions involving such claims.

**11. SUCCESSORS**

OPUD and Rayados, respectively, bind themselves, their partners, officers, successors, assigns and legal representatives to the other Party to this Agreement with respect to the terms of this Agreement.

**12. WRITTEN NOTICE**

All notices to be given between the Parties hereto shall be in writing and may be served by depositing the same in the United States mail, postage pre-paid, certified and addressed to: General Manager, OPUD, 1970 9th Ave, Olivehurst, CA 95691, or such other address as either Party may designate in writing from time to time.

All notices to be given between the Parties hereto shall be in writing and may be served by depositing the same in the United States mail, postage pre-paid, certified and addressed to: Plumas Lake Little League 2070 Wilcox Ranch Road Plumas Lake, CA 95961, or such other address as either Party may designate in writing from time to time.

**13. WAIVER**

None of the provisions of this Agreement shall be considered waived by either Party unless such waiver is specified in writing.

**14. LICENSES AND PERMITS**

Upon commencement of this Agreement, and throughout its term, Rayados will possess all current licenses and permits required by OPUD, the State of California, and/or any other applicable public agency to operate as a nonprofit organization.

**15. TERMINATION**

Either Party has the unrestricted right to terminate this agreement without cause by giving written notice of its intent to terminate eighteen (18) months prior to the intended termination date. Either Party may terminate this agreement for cause upon substantial breach of a material term hereof by the other Party. Notwithstanding the foregoing, OPUD may terminate the agreement for cause in accordance with the following procedure:

- A. This Agreement may be terminated at any time upon thirty (30) days' notice by OPUD's Board for a material uncured breach by Rayados, provided that OPUD shall not seek to terminate this Agreement by reason of an asserted material breach by Rayados unless OPUD has first provided at least thirty (30) days written notice of the asserted breach to Rayados and Rayados has failed to cure such breach (or to diligently commence curative actions satisfactory to OPUD for a breach that cannot be fully cured within thirty (30) days) within the thirty (30)-day notice period..

**16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted and this Agreement shall be read and enforced as though it were included. If through mistake or otherwise, any provision is not inserted or is not correctly inserted, then upon application of either Party to the Agreement shall be amended to make the insertion or correction. All references to statutes and regulations shall include all amendments, replacements, and enactments in the subject, which are in effect as of the date of this agreement, and any later changes, which do not materially and substantially alter the provision of the Parties.

**17. SEVERABILITY**

Should any provision of this Agreement be declared or determined by any court of competent jurisdiction to be illegal, invalid, or unenforceable, the legality, validity and enforceability of the remaining parts, terms or provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision shall be deemed not to be part of this Agreement.

**18. ARBITRATION OF DISPUTES**

THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, EACH PARTY WAIVES ANY RIGHT TO COMMENCE LEGAL ACTION OR ARBITRATION OTHER THAN AS PROVIDED UNDER THE TERMS OF THIS AGREEMENT, AND THIS AGREEMENT

SHALL PROVIDE THE SOLE AND EXCLUSIVE REMEDY FOR RESOLUTION OF DISPUTES.

THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATION OR FUNCTION OF THE ARBITRATOR IN ANY MANNER OR FASHION.

APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE OBJECTION, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF YUBA.

THE ARBITRATOR'S FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR MAY FURTHER AWARD THE COSTS OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY, IF IN THE ARBITRATOR'S DETERMINATION, THE POSITION TAKEN OR MAINTAINED WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.

THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE ARBITRATOR'S AWARD SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL (A) SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTY SHALL LAPSE BY THEIR TERM, OR (B) THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT OR (C) THE ARBITRATOR SHALL MODIFY THOSE TERMS.

THIS ARBITRATION PROVISION SHALL BIND THE PARTIES AND THE PARTIES' SUCCESSORS, ASSIGNS, TRANSFEREES, OR ANY OTHER PERSON OR ENTITY ALLEGING RIGHTS BY OR THROUGH DISTRICT OR DEVELOPER.

**19. VENUE/GOVERNING LAWS**

This Agreement shall be governed by the laws of the State of California and venue shall be exclusive to Yuba County, California.

**20. INDEMNIFICATION; ATTORNEY'S FEES**

Rayados shall indemnify, defend and hold harmless OPUD and its officers, officials, employees and agents from and against any and all liability, loss, damage, expense, and costs including, without limitation, costs and fees of litigation, of every nature and kind arising out of or in connection with Rayados's performance or work hereunder or its failure to comply with any of its obligations contained in this Agreement, except such loss or damage that is caused by the sole or active negligence or intentional misconduct of OPUD, its employees, agents or contractors. This indemnification includes any and all costs and expenses for attorneys' and consultants' fees in litigation, mediation and arbitration.

If suit is brought by either party to this Agreement to enforce any of its terms, the prevailing party shall be entitled to recover their reasonable attorney's fees and costs.

**21. ENTIRE AGREEMENT**

This Agreement represents the entire agreement between OPUD and Rayados and supersedes all prior negotiations, representations or agreements, either written or oral.

This Agreement may be amended or modified only by an agreement in writing, signed by both OPUD and Rayados.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement.

**OLIVEHURST PUBLIC UTILITY  
DISTRICT**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position/Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**YUBA CITY RAYADOS FC**

**Signature:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Position/Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_